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Globalization and interdependence: preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption

Report of the Second Committee*

Rapporteur: Ms. Denise **McQuade** (Ireland)

I. Introduction

1. The Second Committee held a substantive debate on agenda item 55 (see A/64/422, para. 2). Action on sub-item (b) was taken at the 35th and 42nd meetings, on 17 November and 11 December 2009. An account of the Committee's consideration of the sub-item is contained in the relevant summary records (A/C.2/64/SR.35 and 42).

II. Consideration of draft resolutions A/C.2/64/L.37 and A/C.2/64/L.64

2. At the 35th meeting, on 17 November, the representative of the Sudan, on behalf of the States Members of the United Nations that are members of the Group of 77 and China, introduced a draft resolution entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption" (A/C.2/64/L.37), which read:

"*The General Assembly*,

"*Recalling* its resolution 54/205 of 22 December 1999, 56/186 of 21 December 2001 and 57/244 of 20 December 2002, and recalling also its

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resolutions 58/205 of 23 December 2003, 59/242 of 22 December 2004, 60/207 of 22 December 2005, 61/209 of 20 December 2006, 62/202 of 19 December 2007 and 63/226 of 19 December 2008,

"*Welcoming* the entry into force on 14 December 2005 of the United Nations Convention against Corruption,

"*Bearing in mind* that the return of assets is one of the main objectives and also a fundamental principle of the United Nations Convention against Corruption and that States parties to the Convention are obligated to afford one another the widest measures of cooperation and assistance in that regard,

"*Recognizing* that supportive domestic legal systems are essential in preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets,

"*Recalling* that the fight against all forms of corruption requires strong institutions at all levels, including at the local level, able to undertake efficient preventive and law enforcement measures consistent with the United Nations Convention against Corruption, in particular chapters II and III,

"*Noting* the particular concern of developing countries and countries with economies in transition regarding the return of assets of illicit origin derived from corruption, in particular to countries from which they originated, consistent with the principles of the Convention, in particular chapter V, so as to enable countries to design and fund development projects in accordance with their national priorities, in view of the importance that such assets can have to their sustainable development,

"1. *Takes note* of the report of the Secretary-General;

"2. *Welcomes* the high number of Member States that have already ratified or acceded to the United Nations Convention against Corruption, and in this regard urges all Member States and competent regional economic integration organizations, within the limits of their competence, that have not yet done so to consider ratifying or acceding to the Convention as a matter of priority, and calls upon all States parties to fully implement the Convention as soon as possible;

"3. *Urges* Member States to combat and penalize corruption in all its forms as well as the laundering of proceeds of corruption, to prevent the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery consistent with the principles of the Convention, particularly chapter V;

"4. *Condemns* corruption in all its forms, including bribery, as well as the laundering of proceeds of corruption and other forms of economic crime;

"5. *Welcomes* the holding of the third session of the Conference of the States Parties to the United Nations Convention against Corruption, in Doha from 9 to 13 November 2009, and requests the Secretary-General to transmit to the Assembly a report on the third session of the Conference of States Parties to the Convention;

"6. *Calls upon* States parties to continue to support the work carried out by the Open-ended Intergovernmental Expert Working Groups on Asset

Recovery, Technical Assistance and Review of Implementation in order to facilitate the full implementation of the Convention, and the review thereof, and in this regard encourages the Conference of the States Parties to the Convention at its third session to consider the recommendations prepared by the three working groups, including the terms of reference for a review mechanism;

"7. *Affirms* the need for Member States, consistent with the Convention, to take measures to prevent the transfer abroad and laundering of assets derived from corruption, including to prevent the financial institutions in both countries of origin and destination from being used to transfer or receive illicit funds, as well as to assist in their recovery and to return such assets to the requesting State, consistent with the Convention;

"8. *Stresses* the importance of mutual legal assistance, and encourages Member States to enhance international cooperation, consistent with the Convention;

"9. *Calls for* further international cooperation, inter alia, through the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, consistent with the principles of the Convention, and in this regard encourages close cooperation between anti-corruption agencies, law enforcement agencies and financial intelligence units;

"10. *Requests* the Secretary-General to continue to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote, in an effective manner, the implementation of the Convention and to discharge its functions as the secretariat of the Conference of the States Parties to the Convention, in accordance with its mandate;

"11. *Reiterates its call upon* the private sector, both the international and the national levels, including small and large companies and transnational corporations, to remain fully engaged in the fight against corruption, and emphasizes the need for all relevant stakeholders, including within the United Nations system, as appropriate, to continue to promote corporate responsibility and accountability;

"12. *Takes note* of the holding of the sixth Global Forum on Fighting Corruption and Safeguarding Integrity on the theme 'Strength in unity: public-private partnership to fight corruption' in Qatar on 7 and 8 November 2009;

"13. *Requests* the Secretary-General to submit to the General Assembly, at its sixty-fifth session, a report on preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption;

"14. *Decides* to include in the provisional agenda of its sixty-fifth session, under the item entitled 'Globalization and interdependence', the sub-item entitled 'Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption'."

3. At its 42nd meeting, on 11 December, the Committee had before it a draft resolution entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption" (A/C.2/64/L.64), submitted by the Vice-Chairperson of the Committee, Mohamed Chérif Diallo (Guinea), on the basis of informal consultations held on draft resolution A/C.2/64/L.37.

4. At the same meeting, the Committee had before it a statement of programme budget implications of draft resolution A/C.2/64/L.64, submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly (A/C.2/64/L.72).

5. Also at its 42nd meeting, the Committee adopted draft resolution A/C.2/64/L.64 (see para. 8).

6. After the adoption of the resolution, the representative of Mexico made a statement (see A/C.2/64/SR.42).

7. In the light of the adoption of draft resolution A/C.2/64/L.64, draft resolution A/C.2/64/L.37 was withdrawn by its sponsors.

III. Recommendation of the Second Committee

8. The Second Committee recommends to the General Assembly the adoption of the following draft resolution:

Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption

The General Assembly,

Recalling its resolutions 54/205 of 22 December 1999, 55/61 of 4 December 2000, 55/188 of 20 December 2000, 56/186 of 21 December 2001 and 57/244 of 20 December 2002, and recalling also its resolutions 58/205 of 23 December 2003, 59/242 of 22 December 2004, 60/207 of 22 December 2005, 61/209 of 20 December 2006, 62/202 of 19 December 2007 and 63/226 of 19 December 2008,

Welcoming the entry into force on 14 December 2005 of the United Nations Convention against Corruption,[1]

Recognizing that fighting corruption at all levels is a priority and that corruption is a serious barrier to effective resource mobilization and allocation and diverts resources away from activities that are vital for poverty eradication, the fight against hunger, and economic and sustainable development,

Recognizing also that supportive domestic legal systems are essential in preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets,

Recalling that the fight against all forms of corruption requires strong institutions at all levels, including at the local level, able to undertake efficient preventive and law enforcement measures consistent with the United Nations Convention against Corruption, in particular chapters II and III,

Acknowledging the important progress made towards the implementation of chapter V of the Convention, but recognizing that States parties continue to face challenges in asset recovery owing to, inter alia, differences in legal systems, the complexity of multijurisdictional investigations and prosecutions, lack of familiarity with mutual legal assistance procedures of other States and difficulties in identifying the flow of proceeds of corruption, and noting the particular challenges posed in recovering the proceeds of corruption in cases involving individuals who are, or have been, entrusted with prominent public functions and their family members and close associates,

Reiterating its concern about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and the values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law, in particular when an inadequate national and international response leads to impunity,

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[1] United Nations, *Treaty Series*, vol. 2349, No. 42146.

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a stable and transparent environment for national and international commercial transactions in all countries is essential for the mobilization of investment, finance, technology, skills and other important resources, and recognizing that effective efforts at all levels to prevent and combat corruption in all its forms in all countries are essential elements of an improved national and international business environment,

Mindful of the very important role that the private sector can play in fostering economic growth and development and of the active involvement of the United Nations system in facilitating the constructive participation and orderly interaction of the private sector in the development process by embracing universal principles and norms, such as honesty, transparency and accountability,

Recognizing the concern about the laundering and the transfer of assets of illicit origin derived from corruption, and stressing the need to address this concern consistent with the Convention,

Determined to prevent, detect and deter, in a more effective manner, international transfers of illicitly acquired assets and to strengthen international cooperation through the commitment of Member States to effective national and international action,

Concerned about the links between corruption in all its forms, including bribery, corruption-related money-laundering and the transfer of assets of illicit origin, and other forms of crime, in particular organized crime and economic crime,

Noting the particular concern of developing countries and countries with economies in transition regarding the return of assets of illicit origin derived from corruption, in particular to countries from which they originated, consistent with the principles of the Convention, in particular chapter V, so as to enable countries to design and fund development projects in accordance with their national priorities, in view of the importance that such assets can have to their sustainable development,

1. *Takes note* of the report of the Secretary-General;[2]

2. *Welcomes* the significant number of Member States that have already ratified or acceded to the United Nations Convention against Corruption,[1] and in this regard urges all Member States and competent regional economic integration organizations, within the limits of their competence, that have not yet done so to consider ratifying or acceding to the Convention as a matter of priority, and calls upon all States parties to fully implement the Convention as soon as possible;

3. *Expresses concern* about the magnitude of corruption at all levels, including the scale of the transfer of assets of illicit origin derived from corruption, and in this regard reiterates its commitment to preventing and combating corrupt practices at all levels, consistent with the United Nations Convention against Corruption;

[2] A/64/122.

4. *Urges* Member States to combat and penalize corruption in all its forms as well as the laundering of proceeds of corruption, to prevent the transfer of illicitly acquired assets, and to work for the prompt return of such assets through asset recovery consistent with the principles of the Convention, particularly chapter V;

5. *Condemns* corruption in all its forms, including bribery, as well as the laundering of proceeds of corruption and other forms of economic crime;

6. *Welcomes* the conclusion of the third session of the Conference of the States Parties to the United Nations Convention against Corruption, held in Doha from 9 to 13 November 2009, and requests the Secretary-General to transmit to the General Assembly a report on the third session of the Conference of the States Parties to the Convention;

7. *Stresses* the need for transparency in financial institutions, invites Member States to work on the identification and tracing of financial flows linked to corruption, the freezing or seizing of assets derived from corruption and the return of such assets, consistent with the Convention, and encourages the promotion of human and institutional capacity-building in this regard;

8. *Welcomes* the successful outcome of the third session of the Conference of the States Parties, especially the establishment by consensus of a review mechanism for the implementation of the United Nations Convention against Corruption, and calls upon States parties to fully implement the outcomes of the Conference;

9. *Calls*, in particular, for the rapid and effective implementation of the mechanism for the review of implementation of the United Nations Convention against Corruption by all States parties, and, where appropriate, relevant stakeholders, in accordance with the terms of reference of the mechanism;

10. *Takes note with appreciation* of the work of the Open-ended Intergovernmental Working Groups on Asset Recovery, Technical Assistance and Review of the Implementation of the United Nations Convention against Corruption and the open-ended dialogue with international organizations, including the Institutional Integrity Initiative, and calls upon States parties to the Convention to support the work of the newly established Implementation Review Group, including its work on technical assistance, and the newly established Open-ended Intergovernmental Working Group on Prevention of Corruption, as well as the continuing work of the Open-ended Intergovernmental Working Group on Asset Recovery;

11. *Also takes note with appreciation* of the decision of the Conference of the States Parties to the United Nations Convention against Corruption to accept the offer by the Governments of Morocco and Panama to host its fourth and fifth sessions in 2011 and 2013, respectively;

12. *Welcomes* the efforts of Member States that have enacted laws and taken other positive measures in the fight against corruption in all its forms, including in accordance with the United Nations Convention against Corruption, and in this regard encourages Member States that have not yet done so to enact such laws and to implement effective measures at the national level and, in accordance with domestic laws and policies, at the local level, to prevent and combat corruption;

13. *Affirms* the need for Member States, consistent with the Convention, to take measures to prevent the transfer abroad and laundering of assets derived from corruption, including to prevent the financial institutions in both countries of origin and destination from being used to transfer or receive illicit funds, as well as to assist in their recovery and to return such assets to the requesting State, consistent with the Convention;

14. *Urges* all Member States, consistent with the United Nations Convention against Corruption, to abide by the principles of proper management of public affairs and public property, fairness, responsibility and equality before the law and the need to safeguard integrity and to foster a culture of transparency, accountability and rejection of corruption;

15. *Stresses* the importance of mutual legal assistance, and encourages Member States to enhance international cooperation, consistent with the Convention;

16. *Calls for* further international cooperation, inter alia, through the United Nations system, in support of national, subregional and regional efforts to prevent and combat corrupt practices and the transfer of assets of illicit origin, consistent with the principles of the Convention, and in this regard encourages close cooperation between anti-corruption agencies, law enforcement agencies and financial intelligence units;

17. *Requests* the Secretary-General to continue to provide the United Nations Office on Drugs and Crime with the resources necessary to enable it to promote, in an effective manner, the implementation of the Convention and to discharge its functions as the secretariat of the Conference of the States Parties to the Convention, and also requests the Secretary-General to ensure that the new mechanism for the review of implementation of the Convention is adequately funded, in line with the resolution adopted by the Conference of the States Parties;[3]

18. *Reiterates its call upon* the private sector, at both the international and the national levels, including small and large companies and transnational corporations, to remain fully engaged in the fight against corruption, notes in this context the role that the Global Compact can play in fighting corruption and promoting transparency, and emphasizes the need for all relevant stakeholders, including within the United Nations system, as appropriate, to continue to promote corporate responsibility and accountability;

19. *Takes note* of the holding of the sixth Global Forum on Fighting Corruption and Safeguarding Integrity on the theme "Strength in unity: public-private partnership to fight corruption" in Qatar on 7 and 8 November 2009;

20. *Requests* the international community to provide, inter alia, technical assistance to support national efforts to strengthen human and institutional capacity aimed at preventing and combating corrupt practices and the transfer of assets of illicit origin as well as for asset recovery in accordance with chapter V of the United Nations Convention against Corruption, consistent with the principles of the Convention, and to support national efforts in formulating strategies for mainstreaming and promoting transparency and integrity in both the public and private sectors;

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[3] See CAC/COSP/2009/L.9.

21. *Takes note with appreciation* of the Stolen Asset Recovery Initiative of the United Nations Office on Drugs and Crime and the World Bank, takes note of its cooperation with relevant partners, including the International Centre for Asset Recovery, and encourages coordination among existing initiatives;

22. *Takes note* of the partnership between the United Nations Office on Drugs and Crime, the International Criminal Police Organization and the Government of Austria, with the support of the European Anti-Fraud Agency to establish the International Anti-Corruption Academy, to serve as a centre of excellence for education, training and academic research in the field of anti-corruption, including in the area of asset recovery;

23. *Requests* the Secretary-General to submit to the General Assembly, at its sixty-fifth session, a report on preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption;

24. *Decides* to include in the provisional agenda of its sixty-fifth session, under the item entitled "Globalization and interdependence", the sub-item entitled "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption".